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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut;

Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF APPELLANTS

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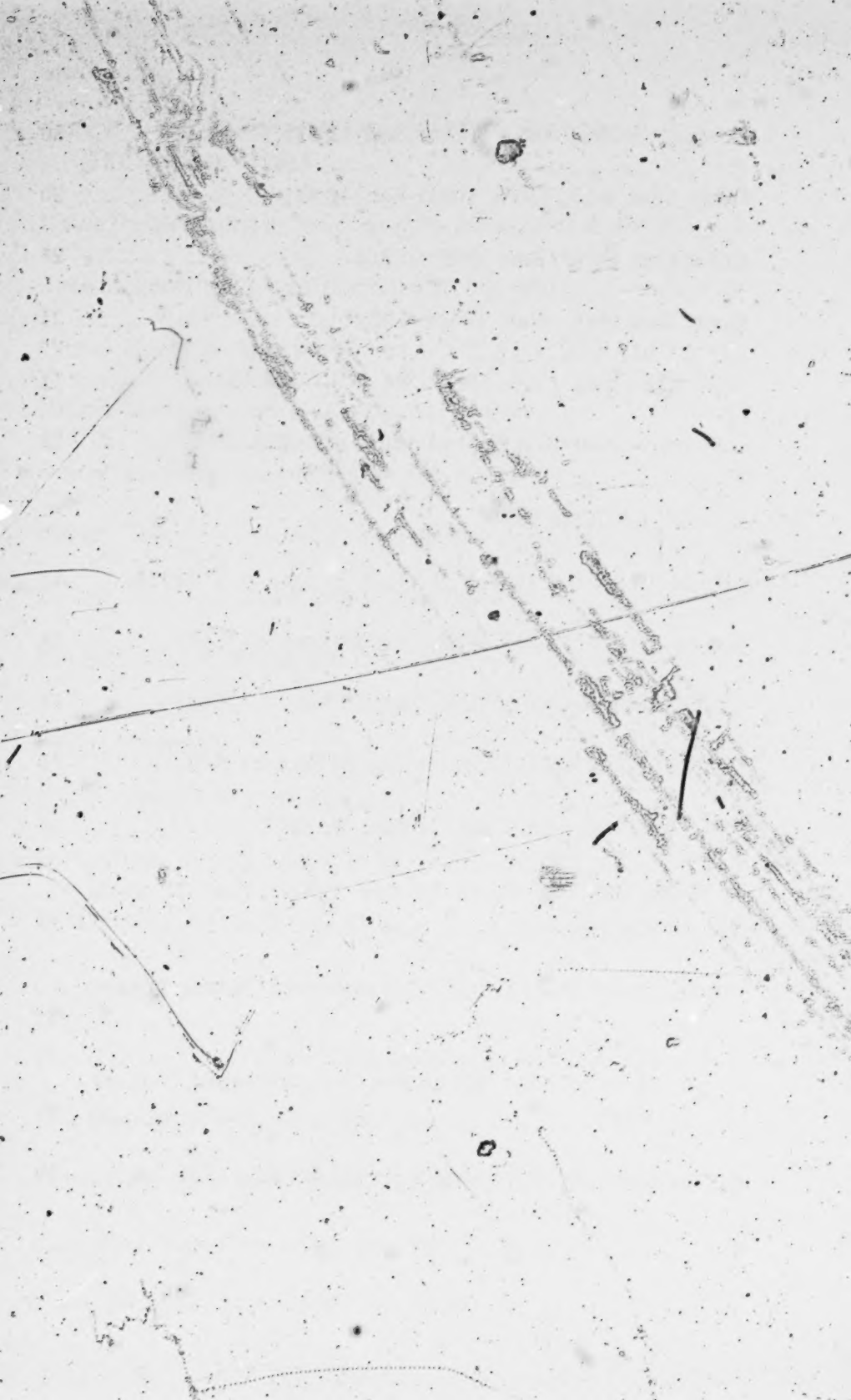

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BRIEF OF APPELLANTS

OPINIONS BELOW

The decision appealed from is reported in 398 F. 2d 672 (2nd Cir. 1968) (R. A., 47A). The District Court decision is reported in 270 F. Supp. 236 (1967) (R.A., 28A).

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1968 (R. A., 60A). The jurisdictional statement was filed on October 7, 1968, and probable jurisdiction was noted in this case on January 13, 1969 (R.A., 61A).

The jurisdiction of this Court rests upon 28 U.S.C. 1254 (2). *City of Detroit* v. *Murray Corporation of America*, 355 U.S. 489 (1958).

QUESTIONS PRESENTED

(1) Whether the imposition and collection of the Connecticut Sales and Use Taxes on the purchase or use of tangible personal property in Connecticut by nonresident military personnel on active duty stationed outside of their resident or domiciliary state pursuant to military orders contravenes Sec. 514 of the Soldiers' and Sailors' Civil Relief Act.

(2) Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act, as interpreted by the United States Court of Appeals for the Second Circuit, is an unconstitutional infringement upon the reserved power of the states to lay and collect taxes.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This appeal involves the Tenth Amendment, U.S. Const.:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Statutes involved are:

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

> SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768].
>
> (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross in-

come, by any State, Territory, possession, or political subdivision of any of the foregoing or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.* [Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:] *Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political sub-division of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has*

jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

(2) *When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*

(50 U.S.C. App., Sec. 574).

* The italicized portions of Section 514 were added in 1944. The portion in brackets was added in 1962. Otherwise the Section is as it stood in 1942.

The Education, Welfare and Public Health Tax Act (commonly known and hereinafter referred to as the Connecticut Sales and Use Tax Act). Conn. Gen. Stat. (Rev. 1958) c. 219, Sec. 12-406-12-432 (a), appended herein (A. A., 2B-43B)

STATEMENT OF THE CASE

Suit was instituted in the United States District Court for the District of Connecticut by the United States of America and Lieutenant Stanley D. Schuman, U.S.N., against various officials of the State of Connecticut to determine whether imposition and collection of the Connecticut Sales and Use Tax contravened Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended. 50 U.S.C. App. Sec. 574.

Federal jurisdiction for the United States of America as a party plaintiff is based on 28 U.S.C. Sec. 1345. The District Court

dismissed Lieutenant Schuman's claim for lack of jurisdiction, from which no appeal was taken.

The District Court awarded summary judgment to the United States but by amendment to its judgment stipulated to by the parties Connecticut was permitted, subject to refund, to continue to collect the disputed taxes pending the ultimate determination of the case on appeal.

This decision was affirmed by the United States Court of Appeals for the Second Circuit and judgment rendered on July 10, 1968. Notice of Appeal was filed in the United States Court of Appeals for the Second Circuit on July 30, 1968. The case was docketed on October 7, 1968 and this Court noted probable jurisdiction on January 13, 1969.

The parties to this action have stipulated that servicemen in Connecticut make most of their day-to-day purchases of tangible personal property, which include food, clothing, toilet articles and other personal items, from military exchanges and commissaries operated by the armed services on military installations and are not subject to any tax under the Sales and Use Tax Act. (R.A., 16A)

The issue in this case is principally concerned with the imposition of sales or use taxes on the purchase or use of large items such as motorboats and cars purchased by servicemen from retailers and private individuals.

In the District Court, the United States offered some examples of the imposition of Sales and Use taxes on naval personnel domiciled in other jurisdictions but stationed in Connecticut. Lieutenant Stanley D. Schuman of Nebraska and Commander Kent J. Carroll of Michigan both purchased used motorboats in Connecticut from non-dealers. Schuman paid the use tax under protest; Carroll refused to pay. Commander Clyde H. Shaffer of Pennsylvania purchased a new car from a Connecticut

dealer who collected the sales tax. Commander Jerome W. Roloff of Wisconsin bought a used car in Florida, and paid a sales tax there. When he subsequently registered the car in Connecticut, he was required to pay the difference between the Florida Sales tax and the Connecticut use tax. Finally, Commander William L. Foster purchased a new car from a Connecticut dealer paying the Connecticut sales tax, and at the time of Registration in Texas, his home state, he was required to pay a Texas use tax.

SUMMARY OF THE ARGUMENT

Section 514 of the Soldiers' and Sailors' Civil Relief Act entitled "Residence for tax purposes" was designed to protect nonresident servicemen from personal property taxes, income taxes and certain annual motor vehicle taxes. To accomplish this result, the statutory scheme of Section 514 removes the following jurisdictional grounds for the purposes of taxation: residence or domicile and the situs of personal property.

No doubt that part of Connecticut's sales tax imposed on the transfer of occupancy of a motel room is outside the scope of Section 514. The same is true of the tax on the purchase of tangible personal property. The situs for imposition of a sales tax is not the situs of the property but, independently, the situs of the transaction. Section 514 is directed solely and specifically to the situs of the property.

Throughout the legislative history of Section 514, Congress made clear its design was principally to protect nonresident servicemen from income and personal property taxes. As a matter of fact, the specific reason stated for preventing personal property from acquiring a new situs was to insulate the nonresident serviceman from personal property taxes. Nowhere does Congress indicate sales and use taxes were intended to fall within the protection of Section 514.

This conclusion is even more compelling when the results of

including sales and use taxes within the scheme of Section 514 are examined. Absurd and inequitable results follow. A Serviceman stationed outside of his home State could travel throughout the United States and claim immunity from any taxes imposed when purchasing tangible personal property. On the other hand, a serviceman stationed in his home state, travelling with a nonresident serviceman could not claim sales tax immunity anywhere. No Congressional power is valid to support legislation creating these unfair and absurd results. In essence, although the scheme of Section 514 is appropriate when applied to personal property, income taxes and certain annual motor vehicle taxes, it is particularly inappropriate when applied to sales and use taxes.

Courts should require Congress to clearly spell out any grant of immunity from state taxation. Furthermore, in interpreting such an act, it is important to balance the Government's need for the immunity and the corresponding injury to the States.

Connecticut has imposed sales and use taxes on purchases and use of property by nonresident servicemen since 1947 with no perceivable injury to our armed forces in protecting and defending our Nation. On the other hand, including sales and use taxes within the scope of Section 514 would cause immense disruption of fiscal affairs of State Government. A serious revenue loss and administrative chaos are inescapable. For example: in an ordinary purchase the responsibility is thrust upon the retailer to distinguish between servicemen who qualify for immunity and those who do not, and thereafter to retain sufficient proof that the sale was exempt in order to satisfy the State. Needless to say, consumers, retailers and the State government will suffer irreparably.

The 10th Amendment to the United States Constitution reserved to the States all powers not specifically granted to the Federal Government. No power granted to the Federal Government can support Section 514 as interpreted by the Court of Ap-

peals. The "war power" is broad but cannot be used indiscriminately. When balancing the benefit to the Federal Government and the corresponding injury to the States, the conclusion is inescapable that Section 514 as interpreted by the Court of Appeals was enacted without Constitutional authority in direct interference with the powers reserved to the States.

ARGUMENT

I. SECTION 514 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT DOES NOT REMOVE THE JURISDICTIONAL GROUNDS FOR IMPOSITION OF THE CONNECTICUT SALES AND USE TAXES.

Section 514 of the Soldiers' and Sailors' Civil Relief Act (50 U. S. C. App. 1964 ed., Sec. 574) does not grant exemption from taxation. It removes the jurisdictional grounds for certain taxes.

This is apparent when Section 514 is highlighted as follows:

> "For the purposes of taxation in respect of any person, or of *his* personal property . . . such person shall not be deemed to have lost a *residence* or *domicile* in any State . . . or to have become a resident in or resident of any other State,"...
>
> "For the purposes of taxation in respect of the personal property . . . of any such person by any State . . . of which such person is not a resident or in which he is not domiciled . . . personal property shall not be deemed to be *located or present in* or to have a *situs* for taxation in such State." (Emphasis added)

Stated simply, Section 514 removes the following jurisdictional grounds for the purpose of taxing nonresident servicemen:

(1) residence or domicile, and

(2) presence, location or situs of tangible personal property.

It should be noted that the jurisdictional grounds removed by Section 514 are uniquely appropriate to ad valorum taxation of personal property and certain annual taxes on motor vehicles.

This Court stated in *State Board of Assessors* v. *Comptoir National D'Escompte*, 191 U.S. 388, 402 (1903);

> "It may be taken as a general rule of the law of taxation of personal property that such property can only be taxed at the *residence* of the owner, or at such place as it has required a *situs* which will subject it to the taxing power of the State where found." (Emphasis added)

This Court must now decide whether Section 514 has removed the jurisdictional grounds for imposition of the Connecticut Sales and Use Tax on purchases by nonresident servicemen.

The logical starting point leading to a resolution of the issue would appear to be an analysis of the Connecticut Sales and Use Tax Act.

Section 12-408 (1) of the General Statutes of Connecticut imposes the sales tax on the sale of tangible personal property at retail and the transfer of occupancy of a hotel room. There is little doubt that Section 514 does not remove the jurisdictional grounds for the sales tax on the *transfer of occupancy* of a hotel room since the imposition of the tax is not dependent on the residence or domicile of the serviceman nor on the presence, location or situs of tangible personal property. We also note that the number of states imposing sales taxes on services has been increasing each year as revenue needs increase. A chart indicating the extent of sales tax on the purchase of services can be found in H.R. No. 565 89th Cong. 1st Session (1965), Part III, Table 21-1, p. 644. It seems obvious that the jurisdictional grounds for the imposition of the sales tax on purchases of services by nonresident servicemen are not removed by Section 514.

We begin, therefore, with the proposition that the portion of the Connecticut Sales and Use Tax Act imposed on the transfer of occupancy of a hotel room to a nonresident serviceman is valid under Section 514 of the Soldiers' and Sailors' Civil Relief Act notwithstanding the interpretation by the lower Court in the instant case.

We come then to the issue in this case: whether that part of the sales tax imposed on the sales of tangible personal property to nonresident servicemen contravenes Section 514. The Connecticut Sales Tax is imposed on retailers for the privilege of selling tangible personal property at retail. Section 514 clearly does not prohibit the imposition of the sales tax on retailers. We respectfully submit this simple statement readily disposes of the issue before this Court. However, since the Court in *First Agricultural National Bank* v. *State Tax Commissioner*, 393 U.S. 339 (1968) decreed the legal incidence of a similar sales tax was on the purchaser for the purpose of granting governmental immunity, we shall extend our analysis to further demonstrate that, notwithstanding this judicial conclusion, Section 514 does not prohibit imposition of the Connecticut sales tax on purchases by nonresident servicemen.

A sale is defined in Section 12-407(2) of the Connecticut Sales & Use Tax Act as "any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever." In *Avco Mfg. Corp.* v. *Connelly*, 145 Conn. 161, 172, 140A. 2d 479 (1958), the Connecticut Supreme Court held that the imposition of the Connecticut sales tax was governed by the transfer of title.[1] In other words, the taxable incidence is the transfer of title by a retailer for a consideration.

Consequently, the presence, location or situs of tangible per-

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[1]The Connecticut Court placed emphasis on the title aspect to distinguish the Connecticut Sales Tax from the Alabama Sales Tax, which was in issue before this Court in *Alabama* v. *King & Boozer*, 314 U.S. 1, 62 S. Ct. 43, 86 L. Ed. 3 (1941).

sonal property are not the jurisdictional grounds which govern the imposition of the Connecticut sales tax; rather the sales tax is imposed on the transfer of title which can be accomplished irrespective of the presence, location or situs of the tangible personal property. To determine when the transfer of title occurs, both the common law and the State law must be examined. The common law is clearly stated in the following quote from *Briggs* v. *United States*, 143 U.S. 346, 354 (1892): "By the common law, a sale of personal property is complete and title passes as between vendor and vendee when the terms of the transfer are agreed upon without actual delivery." An examination of the Uniform Commercial Code, as adopted by Connecticut, clearly indicates location of the sale can be independent of the location of the property. Sec. 42A-2-401 (3) of the General Statutes of Connecticut provides:

> "(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or (b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting."

For administrative purposes, the Connecticut sales tax is not imposed unless the property is located within the State.

We submit this analysis clearly demonstrates that the jurisdictional grounds referred to in Section 514 are not appropriate as a basis for prohibiting the State of Connecticut from imposing and collecting a sales tax on purchases by nonresident servicemen.

II. THE LEGISLATIVE HISTORY CLEARLY EVIDENCES THAT CONGRESS DID NOT INTEND SECTION 514 TO ENCOMPASS SALES AND USE TAXES.

Section 514 of the Soldiers' and Sailors' Civil Relief Act

was first enacted in 1942.[2] Prior thereto, neither the Soldiers' and Sailors' Civil Relief Act of 1918, 40 Stat. 440, nor the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, afforded the tax relief granted by Section 514.

Section 514 was amended in 1944 and in 1962. The legislative history of the original enactment and each amendment thereto is examined in detail below to emphasize the Congressional purpose in enacting this legislation.

This Court has regularly considered the legislative history of an enactment in determining Congressional intent. *United States* v. *Zacks*, 375 U.S. 59, 62, 84 S. Ct., 178, 180.

A. 1942 Enactment of Section 514.

Section 514 was enacted originally as follows:

> "(1) For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent."[3]

In essence, this section protected a serviceman transferred pursuant to military orders from losing an old residence or

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[2]Sec. 17, the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769.
[3]Ibid.

acquiring a new residence or domicile for the purposes of *income* and *property* taxation. Neither the sales tax nor the use tax can be classified as a property tax or an income tax. This Court has affirmed the fact that a sales tax is a privilege tax as distinct from a property tax, *Monamotor Oil Co.* v. *Johnson*, 292 U.S. 86 (1933), and has also distinguished a use tax from a property tax. *Henneford* v. *Silas Mason Co.*, 300 U.S. 577, 582 (1936).

It should, therefore, be readily apparent that Section 514 in no way prohibits the imposition of sales and use taxes. The imposition of a sales tax or a use tax is not based on either residence or domicile.[4]

Accordingly, if Section 514 grants immunity from sales and use taxes, it must be attributed to the subsequent amendments.

B. The 1944 Amendment

In 1944, Section 514 was amended in part by adding the following language:[5]

> ". . . and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.
>
> "Provided, that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.
>
> "(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall

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[4]Sales and use taxes are privilege taxes and are imposed regardless of the residence or domicile of the purchaser or user. *Jacoby, Retail Sales Taxation* (Commerce Clearing House) p. 3 (1938).

[5]Sec. 1, Act of July 3, 1944, c. 307, 58 Stat. 722.

include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

This amendment was a clarifying amendment and the legislative reports indicate that Congress had intended the original 1942 act to prohibit ad valorem personal property taxes as well as income taxes.[6] However, the mere reference to residence and domicile had not prevented some states from imposing personal property taxes on property of nonresident servicemen on the basis that such property had acquired a taxable situs in the taxing State. Therefore, the 1944 amendment was proposed to insure that servicemen were immunized from ad valorem personal property taxes as well as income taxes.

While this is only a summary of the legislative history of the 1944 amendment, the explicit texts of the Senate and House reports leave little doubt that the 1944 amendment was directed to personal property taxes. The explanatory language was not directly solely to the amendments to Sec. 1 of the Act, but to the entire Act, including Section 2. We submit that Section 2(b) should be interpreted accordingly. The licenses, fees and excises imposed in respect to motor vehicles are those imposed annually thereby creating a burden similar to that of personal property taxes. Just as we have demonstrated that the purpose of the 1942 enactment was not to prohibit sales and use taxes, we submit that the purpose of the 1944 amendment was not intended to prohibit the imposition of sales and use taxes.

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[6] S. Rep. No. 959 78th Cong. 2d sess. 1 (1944) (A.A., 43B); H. R. No. 1514, 78th Cong. 2d sess. 2 (1944), (A.A., 52B).

C. The 1962 Amendment

In 1962 Congress added the following language to Section 514:[7]

> "Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders."

Again, the 1962 Congressional reports[8] clearly indicate the purpose of this amendment. The event giving rise to this amendment was the assessment by a Virginia County of ad valorem taxes on the personal property of a nonresident serviceman left behind with his family when he was transferred to sea duty.[9] In order to provide immunity in this situation, the 1962 amendment extends protection to a serviceman's property as long as the serviceman is absent from his home pursuant to military orders regardless of whether he is stationed in the particular taxing jurisdiction.

Again, this change was characterized as a clarifying amendment to cover a particular factual situation. It certainly was not intended to enlarge the scope of Section 514 to embrace sales and use taxes.

D. Legislative Reports Silent as to Sales and Use Taxes.

Although each legislative enactment dealing with Section 514 is accompanied by legislative reports, not a single mention

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[7]Act of October 9, 1962, P. L. 87-771, 76 Stat. 768.
[8]S. Rep. No. 2182, 87th Cong. 2d Sess. 1 (1962) (A.A., 59B); H. R. No. 2126, 87th Cong. 2d Sess. 2 (1962).
[9]*United States* v. *Arlington County*, 326 F 2d 929 (4th Cir. 1964).

of sales and use taxes can be found. However, there is no doubt that Congress well recognized *sales and use taxation* as a distinct form, for it specifically provided in the *Buck Act of 1940*, 54 Statute 1059, 4 U.S.C.A. 104-110, *that sales and use taxes* could be imposed in a federal area. It is interesting and pertinent to note that both the Buck Act and the Soldiers' and Sailors' Civil Relief Act of 1940 were passed by the same session of Congress. Further, at the time of the 1944 amendment to the Soldiers' and Sailors' Civil Relief Act, 23 States had sales taxes in force and 19 had use taxes in force.[10]

By itself, the silence of Congress as to sales and use taxes may not be particularly persuasive. It becomes meaningful, however, when considered in the light of the above analysis of the Connecticut Sales and Use Tax Act and the legislative history of Section 514 of the Soldiers' and Sailors' Civil Relief Act.

III. THIS IS A CASE OF FIRST IMPRESSION.

Cases interpreting Section 514 of the Act are few. The principal cases interpreting Section 514 and the major cases relied upon by the Court of Appeals in arriving at its decision are *Dameron* v. *Brodhead*, 345 U.S. 322, (1953) and *California* v. *Buzard*, 382 U.S. 386 (1966). These cases are readily distinguished from the instant case since the imposition of sales and use taxation was not in issue in either of the cited cases.

In *Dameron* v. *Brodhead*, the issue did not involve a sales or use tax. This Court simply decided that under Section 514 a *personal property tax* could not be imposed on a nonresident serviceman by the State of military station irrespective of whether the domiciliary state imposed a similar tax on that property.

In *California* v. *Buzard*, the issue was a criminal violation resulting from the use of his automobile by Buzard on the high-

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[10]H. R. No. 565, 89th Cong. 1st Sess. (1965), Part III, Table 19-1, p. 610.

ways after his refusal to pay an *annual license fee* on the automobile, *which fee was specially enacted to replace local ad valorem taxation* of automobiles in California.[11] The California sales and use tax act was not in issue before this Court.[12]

Both the decision in the District Court and the decision in the Court of Appeals in the instant case place great emphasis on the language of this Court in the *Buzard* case which states, "The very purpose of Section 514 in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders."[13]

Although the above quotation may be this Court's view of the philosophy behind the adoption of Section 514, we submit it cannot be used to extend the effect of Section 514 beyond its express terms.

We further submit that the Court of Appeals erroneously cited the above-quoted language as authority for exempting nonresident servicemen from the imposition of Connecticut sales and use taxes on their purchases and use of personal property. (R.A., 58A).

For example, it is beyond dispute that a serviceman, resident or nonresident, owning real property, is liable for the payment of real property taxes.[14] Nor can it be disputed that the revenue from real property taxes is used to support the taxing governmental body. The statement from *Buzard* could not be cited as authority for extending the scope of Section 514 to include real property taxes.

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[11]*California* v. *Buzard*, Supra, 395, footnote 9. (1966)
[12]California Revenue and Taxation Code (1939) Secs. 6001-7154.
[13]*California* v. *Buzard*, Supra, 393.
[14] Sec. 514 refers only to taxes with respect to personal property. Real property taxes are permissible but the property cannot be sold for taxes while the owner is serving in the Armed Forces. 50 U. S. C. App. Sec. 560.

We submit that, correspondingly, the language cannot be used to extend the scope of Section 514 to include sales or use taxes. Since this Court has never had the opportunity to consider whether Section 514 extends to nonresident servicemen immunity from sales and use taxes, we suggest the proper approach to a resolution of the issue is an examination of Section 514 and its legislative history.

IV. SECTION 514 SHOULD NOT BE LIBERALLY CONSTRUED HEREIN.

In support of a liberal construction of Section 514 the United States has cited in the lower court the case of *LeMaistre* v. *Leffers*, 333 U.S. 1, 6 (1948) and Senate Rep. No. 1558, 77th Congress 2nd session, p. 2.

Neither *LeMaistre* nor the Senate Report made specific reference to immunity from taxation by the states. *LeMaistre* dealt with the right to redeem property after a tax sale. The statement as to liberal construction in Senate Report 1558 was in reference to the coverage of civilians suffering from hardship as a result of the military service of another.[15]

The State of Connecticut, on the other hand, claims there is abundant case law in support of a strict construction of any statutory or constitutional provision under which immunity or exemption from state taxation is claimed. *Oklahoma Tax Comm.* v. *United States*, 319 U.S. 598, 604 (1943); *Graves* v. *New York ex rel. O'Keefe*, 306 U.S. 466, 480 (1939); *Hale* v. *Iowa State Board of Assessors and Review*, 302 U.S. 95, 103 (1937).

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[15]The entire paragraph in which the language appears is as follows:

"In a few instances persons other than persons in the military service are granted relief from hardship attributable to the military service of another person. Such relief is incidental and is in accord with the main purpose of the bill. Any doubts that arise from the scope and application of the act should be resolved in favor of the person in military service involved."

S. Rep. No. 1558, 77th Cong., 2d Sess. p. 2.

In *Hale* v. *Iowa Board of Assessors and Review*, supra, 103, this Court stated explicitly:

> "Grants of immunity from taxation in derogation of the sovereign power of the State are strictly construed."

We arrive at the point then where the United States seeks a liberal construction of the Act while the State of Connecticut seeks a strict construction. We submit that neither may be the answer.

When the balance of federalism and the right of a state to tax is in issue, the court should be wary of labels. The construction of Section 514 should not rest on the Court choosing between the authorities cited by the appellee for a liberal construction and those cited by the appellant for a strict construction. Determining the extent of federal interference with the State's right to tax is far too basic to be governed by labels, for it requires a careful balance of the injury to the state and the necessity of the federal government. *Union Pacific Railway Company* v. *Peniston*, 18 Wall 5, 30. (1873).

This is not to say this court should legislate this balance. Rules of statutory construction do not exist in vacuum but are based on reason, logic and law.[16] They are guides for the court in construing doubtful statutes. Balancing the injury to the states and the necessity of the federal government is simply suggested as a proper guide for construing the statutory provisions herein before this court.

The parties have stipulated that most of the daily necessities of servicemen are purchased at tax free exchanges on military installations. (R.A., 16A). If servicemen choose to buy items from

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[16]"No single canon of interpretation can purport to give a certain and unerring answer to the question. The question of meaning lies deeper than the law." Horack, Sutherland's Statutory Construction, 3rd Ed. (Callahan and Company) 1943.

Connecticut retailers, they pay a 3½% sales tax; Conn. Gen. Stat., (Rev. 1958) Sec. 12-408 (1), A.A., 9B) or for boats, cars, and airplanes a 3½% on the casual sale if the purchase is from other than a retailer, Conn. Gen. Stat. (Rev. 1958) 12-431, (A.A., 42B) or if an item was purchased outside the state from a retailer for use in Connecticut a 3½% tax on the use. Conn. Gen. Stat., (Rev. 1958) 12-411 (A.A., 14B).

It does not appear that the taxes here in issue have inhibited the federal government or interfered with its defense of our country. It should be emphasized that the Connecticut Sales and Use Tax Act has been in effect since 1947.[17] No objection to its payment by nonresident servicemen was raised until the inception of this suit. Although we are precluded from claiming laches against the United States,[18] we can certainly cite the period of 20 years as clear and convincing proof that the imposition and collection of Connecticut Sales and Use Taxes has in no way interfered with the defense of our nation.

On the other hand, affirmance of the Decision of the Court of Appeals will have disastrous effects on Connecticut as well as all other states imposing sales and use taxes. Sales and use taxes are the principal source of revenue for Connecticut[19] for support of its program in the areas of education, welfare and public health. Although the lower court decision removes only a small segment of taxpayers from its purview, it will thoroughly disrupt the entire system of taxation. Retailers responsible for collection and payment of the tax must not only satisfy themselves that the purchaser is a serviceman stationed outside his domicile and on active duty, but they must further retain sufficient proof

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[17] P. A. No. 228, 1947 Session, Connecticut General Assembly; Conn. Gen. Stat. (1947 Supp.) c. 78 (a), Sections 328 (i)-353 i.

[18] *Costello v. United States*, 365 U.S. 265, 281 (1961).

[19] 35.2% of Connecticut's tax revenue for the fiscal year ending June 30, 1968 was derived from the sales and use tax. Conn. Digest of Adm. Rp. to the Gov., 1967-1968 Vol. 22, p. 62-63.

to satisfy the State of Connecticut that the sale was free from tax.[20]

Imagine the impossible task of a retailer faced with the necessity of distinguishing which of the following servicemen can purchase tax free:

(1) One stationed in Connecticut and domiciled in Massachusetts;

(2) One stationed in Rhode Island and domiciled in Massachusetts;

(3) One stationed in New York and domiciled in New York;

(4) One stationed in Connecticut, originally from New York but who voluntarily changed his domicile to Connecticut.

Furthermore, the retailer must not only identify the status of the serviceman, but must also establish that the purchase is not for a trade or business and not for the benefit of another. Now imagine the task of the State Tax Department in auditing the retailer to verify these tax free sales. The possibilities are staggering. States, retailers and consumers will suffer.

Unfortunately, the detrimental effects to Connecticut and the other states do not end there. Since the lower Court's decision was partially based on the language of Section 514 (1) "taxation in respect of . . . personal property", the decision may afford immunity to nonresident servicemen from the State's cigarette tax upon the purchase of cigarettes,[21] and the State's gasoline tax upon the purchase of gasoline.[22] Since these taxes

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[20]Conn. Gen. Stat., (Rev. 1958) Sec. 12-408 (2), (A.A.,9B).
[21]Conn. Gen. Stat. (Rev. 1958) c. 214.
[22]Conn. Gen. Stat. (Rev. 1958) c. 221.

are built into the purchase price, their administration would be made chaotic.

An alternative suggestion whereby this Court could avoid labels in the highly sensitive area of intergovernmental tax immunity would be by embracing its holding in the case of *United States* v. *City of Detroit*, 355 U.S. 466, 474 as follows:

> "Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such complex problems are ones which Congress is best qualified to resolve."

This Court evidently took this posture as recently as its 1968 decision in *Agricultural National Bank* v. *State Tax Commission*, supra, to the effect that if any change in the taxation of national banks is to be made it must come from Congress.

V. THE DECISION OF THE LOWER COURT HOLDING THAT SALES AND USE TAXES COME WITHIN THE SCOPE OF SECTION 514 PRODUCES UNJUST AND ABSURD RESULTS.

It is a well settled rule of law that statutes should be interpreted to avoid unjust and absurd results. *United States* v. *Bryan*, 339 U.S. 323, 338 (1949); *United States* v. *Katz*, 271 U.S. 354, 357 (1926); *United States* v. *Oregon & Railroad*, 164 U.S. 526, 539 (1896); *In re Chapman, Petitioner*, 166 U.S. 661, 667 (1897).

The scheme of Section 514 in benefiting servicemen is inappropriate to embrace sales and use tax protection. Thus interpreted by the lower Court, it will produce innumerable bizzare and unreasonable results. Examples of injustice are limited only

by the imagination, however the following are cited to emphasize this point:

A. Two servicemen are stationed in Connecticut. One is domiciled in Connecticut the other in California. Being stationed outside of his domicile, the Californian is free from sales and use taxes everywhere except California. The Connecticut resident is not immune anywhere.

If they each purchase pleasure craft in Connecticut, the Connecticut resident would pay the sales tax whereas the Californian would be immune. Although this result is difficult to justify, the next situation is even more bizarre.

On weekend leave these two servicemen take a trip through New England. They each purchase meals in restaurants, sleeping bags and other incidental items. The Californian is free from paying sales tax on these purchases while the Connecticut resident is liable.

B. The same two servicemen visit the home of the Californian. While in California, they both are liable for sales and use taxes. However, as soon as they cross the border into Arizona or Nevada, the Californian is immune from tax but the Connecticut resident must pay sales tax.

The absurdity of these results is apparent. Rather than aiding the United States in waging war, the inclusion of sales and use taxes within the immunity of Section 514 would hinder the governmental effort. As we see the absurdities, so will the servicemen to their utter confusion.

Congress stated that the Soldiers' and Sailors' Civil Relief Act was designed to maintain and protect the morale . . . of our armed forces." H. Rep. No. 2198, 77th Cong. 2d Sess.; p. 2. Including sales and use taxes within the scope of Section 514 would serve to undermine this very purpose.

These absurd examples are greatly increased if the decision effectively forbids States from imposing cigarette taxes and gasoline taxes. The resulting administrative problems arising in each of the 50 states imposing any or all of these taxes are incalculable, insoluble and catastrophic. The resulting adminstrative costs to the taxpayers of the States will be staggering and all out of proportion to the limited benefits derived by the United States or the servicemen themselves.

Additionally, the question of whether the immunity extends to purchases of tangible personal property by wives and children of nonresident servicemen leads to further ramifications and compounds the administrative difficulties to an enormous degree.

In sum, the scheme and scope of Section 514 is particularly appropriate to income taxes, personal property taxes, and annual motor vehicle taxes, and particularly inappropriate when applied to sales and use taxes.

VI. AS INTERPRETED BY THE COURT OF APPEALS, SECTION 514 IS AN UNCONSTITUTIONAL INFRINGEMENT ON THE RESERVED POWER OF THE STATE TO LAY AND COLLECT TAXES.

The issue of constitutionality of Section 514 of the Act was placed before this Court in *Dameron* v. *Brodhead*, supra.

In that case, Brodhead alleged Section 514 was unconstitutional on the ground that it infringed on the reserved power of the States to lay taxes. U. S. Const., Amendment X.

This Court, with Justice Black and Justice Douglas dissenting, held that Section 514 was constitutional, since this statute was a necessary and proper implementation of the power "to declare war", U.S. Const. Art. 1, Sec. 8, cl. 11, and the power "to raise and support armies." Ibid., cl. 12. Significantly, this Court continued, "What has been said in no way affects the reserved

power of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments." *Dameron* v. *Brodhead*, supra, 325.

The decision of the Court of Appeals herein has so broadened the interpretation of Section 514 as to render the above statement of this Court a nullity. It would appear from the Court of Appeals' rationale that any tax which is ultimately passed on to the non-resident serviceman in connection with the sale of tangible personal property falls within the immunity of Section 514.

Accordingly, Connecticut and most other states are now faced with the specter of granting to nonresident servicemen immunity not only from sales and use taxes, but also taxes imposed on their purchases of cigarettes and gasoline. Thus interpreted, we submit, Section 514 is unconstitutional.

The power of Congress to prepare for and wage war is undoubtedly broad in scope. Nevertheless, this Court recently clearly indicated that such power has limits.

In United States v. *Robel*, 398 U.S. 258, (1967) Sec. 5 (a) (1) (d) of the Subversive Activites Control Act of 1950 was alleged unconstitutional inasmuch as it rendered it illegal for a member of a subversive association to be employed in a defense plant. This, it was alleged, interfered with the basic guarantee of freedom of association. The United States argued the Act was a proper exercise of the war power. This Court held that section of the Act unconstitutional and stated:

> "However, the phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit."

Taxation by the States is essential to their very existence, and states are essential to the existence of our nation. *Lane County* v. *Oregon*, 7 Wall 71, 76. The Federal Government cannot

act to prevent state taxation unless it clearly demonstrates that the tax interferes with the performance of a federal function. *Union Pacific Railway Company* v. *Peniston*, supra.

Permitting a state tax on the property of a federally-created railroad corporation, the Court stated in *Union Pacific Railway Company* v. *Peniston*, supra:

> (p. 29) "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the states, we have declared that it is indispensable to their continued existence. * * *

> (p. 30-31) "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which the Federal taxes may be laid. The states are, and they must ever be, coexistent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the states, or prevent their efficient exercise. * * *.

We submit that the imposition of sales and use taxes on the

purchases of personal property by servicemen is within the realm of the private affairs of such servicemen so as to cause no interference with the function of the servicemen in serving and defending our Nation. The words of Justice Douglas in his dissent in *Dameron* v. *Brodhead*, supra, 329, ring even more true in this case:

> "The private affairs of our military . . . the furniture they purchase . . . by the very definition are not in the federal public domain. When Congress undertakes to protect them from state taxation or regulation, it is not acting to protect either a federal instrumentality or any function which a federal agency performs."

Accordingly, we respectfully submit Section 514 as interpreted by the Court of Appeals is an unconstitutional infringement on the power of the States to levy and collect taxes.

CONCLUSION

For the reasons set out above, it is respectfully submitted that Section 514 of the Soldiers' and Sailors' Civil Relief Act does not immunize nonresident servicemen from the Connecticut Sales and Use Tax and, therefore, the decisions of the Courts below should be reversed.

Respectfully submitted,

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APPELLANTS' APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut;

Appellants,

v.

UNITED STATES OF AMERICA, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

EDUCATION, WELFARE AND PUBLIC HEALTH TAX ACT (REV. 1958) AS AMENDED.

SEC. 12-406. Title. This chapter is known and shall be cited as the "Education, Welfare and Public Health Tax Act."

SEC. 12-407. Definitions. Whenever used in this chapter:

(1) "Person" means and includes any individual, firm, co-partnership, joint venture, association of persons however formed, social club, fraternal organization, corporation, estate, trust, fiduciary receiver, trustee, syndicate, the United States, this state or any political subdivision thereof or any group or combination acting as a unit, and any other individual or officer acting under the authority of any court in this state.

(2) "Sale" and "selling" mean and include: (a) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (b) any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of the property for a consideration; (c) the producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting; (d) the furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others; (e) the furnishing, preparing, or serving for a consideration of food, meals or drinks; (f) a transaction whereby the possession of property is transferred but the seller retains the title as security for the pay-

ment of the price; (g) a transfer for a consideration of the title of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition; (h) a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less.

(3) "Retail sale" or "sale at retail" means and includes a sale for any purpose other than resale in the regular course of business of tangible personal property or a transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(4) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(5) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

(6) "Storage" and "use" do not include keeping, retaining or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use there-

after solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(7) "Purchase" means and includes: (a) Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less for a consideration; (b) a transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; (c) a transfer for a consideration of tangible personal property which has been produced, fabricated or printed to the special order of the customer, or of any publication, except tangible personal property consisting of an original visualization or design where the intrinsic value lies in the manual skill and imagination of the maker thereof and which is not produced by the maker for public exhibition.

(8) "Sales price" means the total amount for which tangible personal property is sold or the total amount of rent received for occupancy, valued in money whether paid in money or otherwise, without any deduction on account of any of the following: (a) The cost of the property sold; (b) the cost of materials used, labor or service cost, interest charged, losses or any other expenses; (c) the cost of transportation of the property prior to its purchase. The total amount for which the property is sold or the total amount of rent received for occupancy includes all of the following: (a) Any services that are a part of the sale; (b) any amount for which credit is given to the purchaser by the seller. "Sales price" does not include any of the following: (a) Cash discounts allowed and taken on sales; (b) the amount charged for property returned by customers upon rescission of the contract of sale when the

entire amount charged therefor is refunded either in cash or credit, and when the property is returned within ninety days from the date of purchase; (c) the amount charged for labor or services rendered in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

(9) "Gross receipts" means the total amount of the sales price, of the retail sales of retailers or the total amount of the rent received for occupancy, valued in money, whether received in money or otherwise, without any deduction on account of any of the following: (a) The cost of the property sold. However, in accordance with such regulations as the tax commissioner may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property; (b) the cost of the materials used, labor or service cost, interest paid, losses or any other expense; (c) the cost of transportation of the property prior to its sale to the purchaser. The total amount of the sales price includes all of the following: (a) Any services that are a part of the sale; (b) all receipts, cash, credits and property of any kind; (c) any amount for which credit is allowed by the seller to the purchaser. "Gross receipts" do not include any of the following: (a) Cash discounts allowed and taken on sales; (b) sales price of property returned by customers upon rescission

of the contract of sale when the full sales price is refunded either in cash or credit, and when the property is returned within ninety days from the date of sale; (c) the price received for labor or services used in installing or applying the property sold; (d) the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer; (e) transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

(10) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(11) "Seller" includes every person engaged in the business of selling tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of the sales tax and every operator as defined in subsection (18) of this section.

(12) "Retailer" includes: (a) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others; (b) every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; (c) every operator as defined in subsection (18) of this section; (d) every person soliciting orders within this state by means of mail order catalogs or other advertising circulars who, by reason thereof receives and accepts orders either within or without the state from the general public in this state for the sale and delivery of goods customarily sold in retail business establishments; (e) when in the opinion of the tax commissioner it is necessary for the efficient administration of this chapter to regard

salesman, representative, peddler or canvasser as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him, the tax commissioner may, in his discretion, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter.

(13) "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses.

(14) "In this state" or "in the state" means within the exterior limits of the state of Connecticut and includes all territory within these limits owned by or ceded to the United States of America.

(15) "Engaged in business in the state" means selling in this state, tangible personal property for use, storage or consumption within the state or engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less. The term shall include but shall not be limited to the following acts or methods of transacting business: (a) Maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business and (b) having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders of tangible personal property.

(16) "Hotel" means any buildings regularly used and kept open as such for the feeding and lodging of guests where any person who conducts himself properly and who is able and ready to pay for such services is received if there are ac-

commodations for him and which derives the major portion of its operating receipts from the renting of rooms and the sale of food. "Hotel" shall include any apartment hotel wherein apartments are rented for fixed periods of time, furnished or unfurnished, while the keeper of such hotel supplies food to the occupants thereof, if required. (17) "Lodging house" means any building or portion of a building, other than a hotel or apartment hotel, in which persons are lodged for hire with or without meals, including, but not limited to, any motel, motor court, motor inn, tourist court or similar accommodation; provided the terms "hotel", "apartment hotel" and "lodging house" shall not be construed to include: (a) Privately owned and operated convalescent homes, homes for the aged, infirm, indigent or chronically ill; (b) religious or charitable homes for the aged, infirm, indigent or chronically ill; (c) privately owned and operated summer camps for children; (d) summer camps for children operated by religious or charitable organizations, or (e) lodging accommodations at educational institutions. (18) "Operator" means any person operating a hotel or lodging house in the state, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or lodging house. (19) "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel or lodging house, or the right to the use or possession of the furnishings or the services and accommodations accompanying the use and possession of such room or rooms, for a period of thirty consecutive calendar days or less. (20) "Room" means any room or rooms of any kind in any part or portion of a hotel or lodging house let out for use or possession for lodging purposes. (21) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator

to the occupant, without any deduction therefrom whatsoever. ever.

SEC. 12-408. *The sales tax.* (1) *Imposition and rate.* For the privilege of selling tangible personal property at retail, or of transferring occupancy of any room or rooms in a hotel or lodging house in this state for a consideration, a tax is hereby imposed on all retailers at the rate of three and one-half per cent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or, with respect to each such transfer of occupancy, from the total amount of rent received for such occupancy of any room or rooms in a hotel or lodging house for the first period of not exceeding thirty consecutive calendar days, except that a rate of one and three-quarters per cent of such gross receipts on all sales of fourteen cents or less is hereby imposed in lieu of said rate of three and one-half per cent, provided the retailer making such sales shall keep records thereof acceptable to the tax commissioner. Upon his failure to keep such records, said rate of three and one-half per cent shall apply to all such sales. An amount equal to ten per cent of the gross revenue from the tax imposed on transfers of occupancy by this section for the last-preceding fiscal year is appropriated to the state development commission and shall be used by said commission for the promotion and development of the recreation industry of Connecticut, including, but not limited to, the vacation, travel, hotel, motel and restaurant businesses in this state. Said ten per cent thus appropriated may be used for the purchase of advertising and for the production and distribution of printed literature designed to promote greater vacation travel into the state. Not more than ten per cent of such appropriations shall be devoted to administrative costs including personnel.

(2) *Reimbursement.* Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer and such tax reimbursement, termed "tax" in this and

the following subsections, shall be paid by the consumer to the retailer and each retailer shall collect from the consumer the full amount of the tax imposed by this chapter or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer to the retailer, when so added to the original sales price, and shall be recoverable at law in the same manner as other debts except as provided in section 12-432a.

(3) *Bracket system for adding and collecting tax.* For the purpose of adding and collecting the tax imposed by this chapter, or an amount equal as nearly as possible or practicable to the average equivalent thereof, by the retailer from the consumer the following bracket system shall be in force and effect as follows:

Amount of Sale	Amount of Tax
$0.01 to $0.14 inclusive	No Tax
.15 to .38 inclusive	1¢
.39 to .64 inclusive	2¢
.65 to .88 inclusive	3¢
.89 to 1.18 inclusive	4¢
1.19 to 1.57 inclusive	5¢
1.58 to 1.85 inclusive	6¢
1.86 to 2.14 inclusive	7¢

On all sales above $2.14, the tax shall be computed at the rate of three and one-half per cent.

(4) *Unlawful advertising.* No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the sales price of the property sold or that, if added, it or any part thereof will be refunded. Under the provisions of this section, however, a retailer may advertise the sale of tangible personal property by any of the following methods: By stating the

sales price alone without reference to the tax; by stating separately the sales price and the amount of tax to be collected thereon; by stating the sales price "plus tax" or "exclusive of tax" or by stating a sales price which includes the tax, together with the words "tax included" or "tax incl."; provided the retailer in the case of all such sales shall maintain his records to show separately the actual price of such sales and the amount of the tax paid thereon; and provided such retailer, if requested, shall furnish the consumer with a sales slip or other like evidence of the sale, showing the tax separately computed thereon. Any person violating any provision of this subsection shall be fined not more than one hundred dollars for each offense.

(5) *Notices, signs or advertisements subject to approval.* No retailer shall exhibit or display on his premises any notice, sign or other advertising matter tending to mislead the public in connection with the imposition or collection of the tax. The tax commissioner may approve a form of notice for the purpose of explaining the operation of the tax.

SEC. 12-409. *Permits.* (1) *Permit required.* No person shall engage in or transact business as a seller within this state, unless a permit or permits have been issued to him as hereinafter prescribed.

(2) *Application for permit.* Every person desiring to engage in or conduct business as a seller within this state shall file with the commissioner an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business and such other information as the commissioner requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation,

by an executive officer or some person specifically authorized by the corporation to sign the application.

(3) *Permit fee.* At the time of making an application the applicant shall pay to the state tax commissioner a permit fee of one dollar for each permit.

(4) *Issuance and display of permit.* After compliance with subsections (1), (2) and (3) of this section by the applicant, the commissioner shall grant and issue to such applicant a separate permit for each place of business within the state. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(5) *Reissuance of permit.* A seller whose permit has been suspended or revoked shall pay to the tax commissioner a fee of five dollars for the reissuance of a permit.

(6) *Revocation of permit.* Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any regulation of the commissioner relating to the sales tax prescribed and adopted under this chapter, the commissioner, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by registered or certified mail. The commissioner shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the regulations of the commissioner.

(7) *Unlawful acts.* Any person who violates any provision of this section shall be fined not more than fifty dollars

for the first offense and not more than one hundred dollars for each subsequent offense. For the purpose of this subsection, the engaging in or conducting of a business as a seller in this state for each period of one week without a permit shall constitute a separate offense.

SEC. 12-410. *Presumptions and resale certificates.* (1) *Presumption of taxability; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(2) *Effect of certificate.* The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(3) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the commissioner prescribes.

(4) *Liability of purchaser.* If a purchaser who gives a certificate makes any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale

by the purchaser as of the time the property is first used by him, and the cost of the property to him shall be deemed the gross receipts from such retail sale. If the sole use of the property other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

SEC. 12-411. *The use tax.* (1) *Imposition and rate.* An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state at the rate of three and one-half per cent of the sales price of the property.

(2) *Liability for tax.* Every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the commissioner under such regulations as he may prescribe, to collect the tax and who is, for the purposes of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subsection (3) of this section is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(3) *Collection by retailer.* Every retailer engaged in business in this state and making sales of tangible personal property for storage, use or other consumption in this state, not exempted under this chapter, shall, at the time of making the sales or if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the use tax from the purchaser and give to the

purchaser a receipt therefor in the manner and form prescribed by the commissioner. For the purpose of uniformity of tax collection by the retailer the tax brackets set forth in subsection (3) of section 12-408 pertaining to the sales tax shall be employed in the computation of the tax imposed by this section.

(4) *Tax as debt.* The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

(5) *Unlawful advertising.* The provisions of subsection (4) of section 12-408 pertaining to the sales tax shall apply with equal force to the use tax.

(6) *Separate statement of tax.* The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

(7) *Unlawful acts.* Any person violating the provisions of subsection (3), (5) or (6) shall be fined not more than one hundred dollars.

(8) *Registration of retailers.* Every retailer selling tangible personal property for storage, use or other consumption in this state shall register with the commissioner and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state and such other information as the commissioner may require.

(9) *Presumption of purchase for use; resale certificate.* For the purpose of the proper administration of this chapter and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state until the

contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

(10) *Effect of certificate.* The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for by section 12-409 and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

(11) *Form of certificate.* The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificates shall be substantially in such form as the commissioner may prescribe.

(12) *Liability of purchaser.* If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

(13) *Presumption of purchase from retailer.* It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer for storage, use or other consumption in this state.

SEC. 12-412. *Exemptions.* Taxes imposed by this chapter shall not apply to the gross receipts from the sale of and the storage, use or other consumption in this state with respect to the following items:

(a) *The United States, the state or subdivisions.* Sales of tangible personal property to the United States, the state of Connecticut or any of the political subdivisions thereof, or its or their respective agencies.

(b) *Federal exemptions.* Sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States.

(c) *Gas, water, electricity, telephone and telegraph services.* The sale, furnishing or service of gas, water, electricity, telephone and telegraph when delivered to consumers through mains, lines or pipes.

(d) *Prescription medicines.* Sales of medicine only by prescription.

(e) *Nonprofit charitable hospitals.* Sales of tangible personal property to and by nonprofit charitable hospitals in this state for the exclusive purposes of such institutions.

(f) *Newspapers and magazines.* Sales of magazines by subscription and of newspapers.

(g) *Cigarettes.* Sales of cigarettes upon the sale of which a tax is imposed by the law of this state.

(h) *Charitable and religious organizations.* Sales of tangible personal property to charitable and religious organizations.

(i) *Educational institution meals.* Sales of food products and meals in a student cafeteria, dining-hall, dormitory, fraternity or sorority maintained in a private, public or pa-

rochial school, college or university, to members of such institutions or organizations.

(j) *Children's clothing.* Sales of articles of children's clothing, classified as such in accordance with the recognized standards of the trade, for the express and exclusive use of children and subject to regulations prescribed by the commissioner.

(k) *Personal services.* Professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(l) *Livestock, rabbits and poultry; feed; seeds and tree seedlings; plants; fertilizer.* (1) Sales of livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption; (2) sales of feed, including the bags in which it is customarily contained, for livestock, rabbits and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business; (3) sales of seeds and tree seedlings or transplants sold by the state forester under section 23-23; (4) sales of fertilizer. Fertilizer shall include ground limestone, hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones, as well as other substances commonly regarded in the same category and for the same use; (5) sales of plants, including parts of plants, suitable for planting to produce food for human consumption or when such plants, including parts thereof or the produce thereof, are to be sold in the regular course of business, including such item as seedpotatoes, onion sets, asparagus roots, berry plants or bushes and fruit trees. (6) Sales of draft horses.

(m) *Food products.* The sale of food products for human consumption. "Food products" include cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg prod-

ucts, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery. "Food products" do not include spirituous, malt, or vinous liquors, soft drinks, sodas or beverages such as are ordinarily dispensed at bars and soda fountains, or in connection therewith, medicines except by prescription, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts. "Food products" also do not include meals served on or off the premises of the retailer or drinks or foods furnished, prepared or served for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the retailer, except for meals for which the purchaser is charged a total of less than one dollar as provided in subsection (q) of this section.

(n) *Containers.* (1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; (2) containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. As used herein, "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers." Nothing in this subsection shall be construed so as to tax the gross receipts from the sale of or the storage, use or other consumption in this state of bags in which feed for livestock and poultry, as defined in subsection (l), is customarily contained.

(o) *Motor vehicle fuel.* There are exempted from the taxes imposed by this chapter the gross receipts from the dis-

tribution of and the storage, use or other consumption in this state of motor vehicle fuel the distribution of which in this state is subject to the tax imposed by the laws of this state.

(p) *Domestic fuel.* Sales of fuel used exclusively for domestic purposes.

(q) *Sales of meals.* The sale of a meal consisting of any of the items defined as food products in subsection (m) hereof for consumption on the premises and for which the purchaser is charged a total of less than one dollar. The exemption provided herein shall apply to the total charge for each such meal separately computed, whether the purchaser pays for meals other than his own, or not. The gross receipts from all such meals costing less than one dollar shall be exempt from the tax imposed by this chapter, provided the retailer claiming such exemptions shall maintain adequate records to support the same, otherwise such gross receipts shall be subject to the tax.

(r) *Production materials.* Sales of and the storage, use or other consumption of materials, rope, fishing nets, tools and fuel or any substitute thereof, but excluding machinery or replacement parts thereof used in production, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly in agricultural production or in the fishing industry or in an industrial plant in the actual fabrication of the finished product to be sold. The word "machinery" as used herein shall mean the basic machine itself including all of its component parts and contrivances, such as belts, pulleys, shafts, moving parts, operating structures and all equipment or devices used or required to control regulate or operate the machinery. For the purpose of this subsection, the raising of poultry and livestock shall be construed to be included in the term "agricultural production." Sales of and the storage, use or other consumption of materials, tools and fuel or any substitute thereof, but ex-

cluding machinery or replacement parts thereof, when such products are used and consumed directly in the furnishing of power to an industrial manufacturing plant or in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.

(s) *Oxygen; blood plasma; prostheses.* Sales of oxygen, blood or blood plasma when sold for medical use; sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure, including the extremities of the individual; sales of artificial limbs, artificial eyes and other equipment worn as a correction or substitute for any functioning portion of the body, and artificial hearing aids when designed to be worn on the person of the owner or user; sales of crutches and wheel chairs for the use of invalids and crippled persons.

(t) *Flyable aircraft and equipment.* Sales of and the storage, use or other consumption of flyable aircraft complete with necessary equipment and modifications, but not separate engines and parts thereof, sold to persons taking delivery and using such aircraft as certificated or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such aircraft in this state otherwise than in the removal of such aircraft from this state.

(u) *Personal property for incorporation into water treatment facilities.* Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities for the treatment of industrial waste before the discharge thereof into any waters of the state or

into any sewerage system emptying into such waters, the primary purpose of which is the reductions, control or elimination of pollution of such waters, certified as approved for such purpose by the water resources commission. For the purposes of this subdivision "industrial waste" means any harmful thermal effect or any liquid, gaseous or solid substance or combination thereof resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resource.

(v) *Personal property for incorporation into air pollution control facilities.* Sales of and the storage, use or other consumption of tangible personal property acquired for incorporation into facilities, the primary purpose of which is the reduction, control or elimination of air pollution, certified as approved for such purpose by the air pollution control commission.

SEC. 12-413. *Exemptions from use tax.* (1) *Where sales tax applicable.* The storage, use or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

(2) *Property purchased from United States.* The storage, use or other consumption in this state of property purchased from any incorporated agency or instrumentality of the United States, except (a) any property reported to the Surplus Property Board of the United States or any successor thereto, as surplus property by any owning agency; and (b) any property included in any contractor inventory, is exempted from the use tax. "Surplus property," "owning agency," and "contractor inventory" as used in this section have the meanings ascribed to them in that act of the Congress of the United States known as the "Surplus Property Act of 1944."

(3) *Purchase brought into state by resident.* The use tax shall not apply to the purchase of any articles of tangible personal property which have been brought into this state on the person of a resident of this state when the purchase price of the same does not exceed twenty-five dollars; provided such purchase shall be for personal use or consumption in this state and not for use in consumption in carrying on a trade, occupation, business or profession.

SEC. 12-414. *Returns and payments.* (1) *Due date.* The taxes imposed by this chapter are due and payable to the commissioner quarterly on or before the last day of the month next succeeding each quarterly period. "Quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October of each year or, if any seller commences business on a date other than the first day of January, April, July or October, a period beginning on the date of commencement of business and ending on December thirty-first, March thirty-first, June thirtieth or September thirtieth.

(2) *Return.* On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the commissioner in such form as the commissioner may prescribe. For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due a retailer required to collect the tax, except that every person making such purchases for personal use or consumption in this state, and not for use or consumption in carrying on a trade, occupation, business or profession, need file only one individual use tax return covering purchases during a calendar year. Such return shall be filed and the tax due thereon paid on or before the last day of the

month succeeding the end of the calendar year for which such return is filed. Returns should be signed by the person required to file the return or by his authorized agent but need not be verified by oath.

(3) *Contents of return.* For purposes of the sales tax the return shall show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use or consumption of which became subject to the use tax during the preceding reporting period. The return shall also show the amount of the taxes for the period covered by the return in such manner as the commissioner may require and such other information as the commissioner deems necessary for the proper administration of this chapter. The tax commissioner is authorized in his discretion, for purposes of expediency, to permit returns to be filed in an alternative form wherein the person filing the return may elect to report his gross receipts, including the tax reimbursement to be collected as provided for herein, as a part of such gross receipts or to report his gross receipts exclusive of the tax collected in such cases where the gross receipts from sales have been segregated from tax collections. In the case of the former, ninety-six and six-tenths per cent of such gross income may be considered to be the gross receipts from sales exclusive of the taxes collected thereon.

(4) *Filing return.* Returns, together with the amount of the tax due thereon, shall be filed with the tax commissioner.

(5) *Return periods.* The commissioner, if he deems it

necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for other than quarterly periods.

(6) *Extension of time.* The commissioner for good cause may extend the time for making any return and paying any amount required to be paid under this chapter, if a written request therefor is filed with the commissioner together with a tentative return which must be accompanied by a payment of the tax, which shall be estimated in such tentative return, on or before the last day for filing the return. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one-half of one per cent per month, or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

SEC. 12-415. *Deficiency assessments.* (1) *Deficiency assessments.* If the commissioner is not satisfied with the return of the tax or the amount of tax required to be paid to the state by any person, he may compute and assess the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency assessments may be made of the amount due for one or for more than one period.

(2) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(3) *Offsets.* In making an assessment the commissioner may, in his discretion, offset overpayments for a period or

periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed on the basis of one-half of one per cent per month, or fraction thereof, from the last day for the filing of the respective returns, but the allowance of interest on overpayments shall be limited to the provisions of this subsection and subsection (2) of section 12-416.

(4) *Ten per cent penalty.* If any part of the deficiency for which a deficiency assessment is made is due to negligence or intentional disregard of this chapter or authorized regulations, a penalty of ten per cent of the amount of assessment shall be added thereto.

(5) *Twenty-five per cent penalty.* If any part of the deficiency for which an assessment is made is due to fraud or an intent to evade this chapter or authorized regulations, a penalty of twenty-five per cent of the amount of the assessment shall be added thereto.

(6) *Notice of assessment.* The commissioner shall give to the retailer or person storing, using or consuming tangible personal property written notice of his assessment. The notice may be served personally or by mail. If by mail, it shall be addressed to the retailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the commissioner's office. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States post office or mail box.

(7) *Limitations; deficiency assessments.* Except in the case of fraud, intent to evade this chapter or authorized regulations, failure to make a return, or claim for additional amount pursuant to subsection (3) of section 12-418, every

notice of a deficiency assessment shall be mailed within three years after the last day of the month following the quarterly period for which the amount is proposed to be assessed or within three years after the return is filed, whichever period expires later. The limitations specified in this subsection does not apply in case of a sales tax proposed to be assessed with respect to sales of property for the storage, use or other consumption of which notice of a deficiency assessment has been or is given pursuant to subsection (6) of this section, subsection (5) of section 12-416, subsection (2) of section 12-417 and this subsection. The limitation specified in this subsection does not apply in case of an amount of use tax proposed to be assessed with respect to storage, use or other consumption of property for the sale of which notice of a deficiency assessment has been or is given pursuant to said subsections and this subsection.

(8) *Waiver.* If, before the expiration of the time prescribed in subsection (7) of this section for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SEC. 12-416. *Assessment if no return made.* (1) *Assessment; failure to file return.* If any person fails to make a return, the commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the commissioner's possession or may come into his possession. Upon the basis of

this estimate the commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten per cent thereof. One or more assessments may be made for one or for more than one period.

(2) *Offsets.* In making an assessment the commissioner may, in his discretion offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed on the basis of one-half of one per cent per month or fraction thereof from the last day for the filing of the respective returns.

(3) *Interest.* The amount of the assessment, exclusive of penalties, shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month succeeding the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

(4) *Penalties.* If the failure of any person to file a return is due to fraud or an intent to evade this chapter or regulations, a penalty of twenty-five per cent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the ten per cent penalty provided in subsection (1) of this section.

(5) *Notice of assessment.* Promptly after making his assessment the commissioner shall give to the person written notice of the estimate, assessment and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-417. *Jeopardy assessments.* (1) *Jeopardy assessment.* If the commissioner believes that the collection

of any tax or any amount of tax required to be collected and paid to the state or of any assessment will be jeopardized by delay, he shall thereupon make an assessment of the tax or amount of tax required to be collected, noting that fact upon the assessment. The amount assessed is immediately due and payable.

(2) *Interest and penalty.* If the amount specified in the assessment is not paid within ten days after service of notice thereof upon the person against whom the assessment is made, the amount becomes final at the expiration of the ten days, unless a petition for reassessment is filed within the ten days, and the delinquency penalty and the interest provided in section 12-419 shall attach to the amount of the tax or the amount of the tax required to be collected.

(3) *Petition for reassessment; security.* The person against whom a jeopardy assessment is made may file a petition for the reassessment thereof, pursuant to section 12-418, with the commissioner within ten days after the service upon him of notice of the assessment. Such person shall also, within said ten-day period, deposit with the commissioner such security as the commissioner deems necessary to insure compliance with this chapter. The security may be sold by the commissioner in the manner prescribed by section 12-430.

Sec. 12-418. *Reassessments.* (1) *Petition for reassessment.* Any person against whom an assessment is made under section 12-415 or 12-416 or any person directly interested may petition for a reassessment within thirty days after service upon such person of notice thereof. If a petition for reassessment is not filed within the thirty-day period, the assessment becomes final at the expiration of the period.

(2) *Oral hearing.* If a petition for reassessment is filed within the thirty-day period, the commissioner shall reconsider the assessment and, if the person has so requested in his

petition, shall, in his discretion, grant the person an oral hearing and shall give him ten days' notice of the time and place of the hearing. The commissioner may continue the hearing from time to time, as may be necessary, and may assign the conduct of such hearing to his representative.

(3) *Decrease or increase of assessment.* The commissioner may decrease or increase the amount of the assessment before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the commissioner at or before the hearing.

(4) *Finality date of order or decision.* The order or decision of the commissioner upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice thereof.

(5) *Due date of assessment; penalty.* All assessments made by the commissioner under section 12-415 and 12-416 are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten per cent of the amount of the assessment, exclusive of interest and penalties, shall be added thereto.

(6) *Service of notice.* Any notice required by this section shall be served personally or by mail in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-419. *Interest and penalties.* Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of assessments made by the commissioner under sections 12-415 and 12-416, within the time required shall pay a penalty of five per cent of the tax or amount of the tax during the first fifteen days that such amount remains due and unpaid, which penalty shall be increased to ten per cent thereafter, in addition to the tax or amount of the tax, plus interest at the rate of one-

half of one per cent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

SEC. 12-420. *Collection of taxes. Delinquent taxes.* The amount of any tax, penalty or interest due and unpaid under the provisions of this chapter may be collected under the provisions of section 12-35. The warrant therein provided for shall be signed by the commissioner or his authorized agent. The amount of any such tax, penalty and interest shall be a lien, from the last filing day of any quarterly period for which the taxpayer is delinquent until discharged by payment, against all real estate of the taxpayer within the state, and a certificate of such lien signed by the commissioner may be filed for record in the office of the clerk of any town in which such real estate is situated, provided no such lien shall be effective as against any bona fide purchaser or encumbrancer of any interest in any such property to whom such property is transferred between the last day of such quarterly period and the date on which such lien is recorded. When any tax with respect to which a lien has been recorded under the provisions of this section has been satisfied, the commissioner, upon request of any interested party, shall issue a certificate discharging such lien, which certificate shall be recorded in the same office in which the lien was recorded. Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the superior court for the county in which the property subject to such lien is situated, or, if such property is located in two or more counties, in the superior court for any one such county and the court may limit the time for redemption or order the sale of such property or pass such other or further decree as it judges equitable.

SEC. 12-421. *Hearing by commissioner.* Any taxpayer, having paid any tax as provided by this chapter, aggrieved by

the action of the commissioner or his authorized agent in fixing the amount of such tax or in imposing any penalty hereunder, may apply to the commissioner, in writing, within thirty days after the notice of such action is delivered or mailed to him, for a hearing and a correction of the amount of the tax or penalty so fixed, setting forth the reasons why such hearing should be granted and the amount in which such tax should be reduced. The commissioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing is denied, the applicant shall be notified thereof forthwith; if it is granted, the commissioner shall notify the applicant of the time and place fixed for such hearing. After such hearing the commissioner may make such order in the premises as appears to him just and lawful and shall furnish a copy of such order to the applicant. The commissioner may, by notice in writing at any time within three years after the date when any return of any taxpayer has been due, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of relevant information concerning the taxpayer to appear before him or his authorized agent with any specified books of account, papers or other documents, for examination under oath.

Sec. 12-422. *Appeal.* Any taxpayer aggrieved because of any order, decision, determination or disallowance of the tax commissioner under section 12-418, 12-421 or 12-425 may, within one month after service upon the taxpayer of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for Hartford county, which shall be accompanied by a citation to the tax commissioner to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner, as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to the state of Connecticut, with surety

to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by it. Said court may grant such relief as may be equitable and, if such tax has been paid prior to the granting of such relief, may order the treasurer to pay the amount of such relief, with interest at the rate of six per cent per annum to the aggrieved taxpayer. If the appeal has been taken without probable cause, the court may tax double or triple costs, as the case demands; and, upon all such appeals which are denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

SEC. 12-423. *Abatement of taxes.* When any tax assessed under the provisions of this chapter has been found to be uncollectible, such tax and penalty or interest assessed in connection therewith may be abated upon the advice of the attorney general. Upon such approval the commissioner of finance and control shall certify such abatement to the comptroller and treasurer, and an itemized statement of all such abatements shall be included in the published report of the commissioner of finance and control.

SEC. 12-424. *Payments on termination of business and successor's liability.* (1) *Withholding by purchaser.* If any retailer liable for any amount under this chapter sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the commissioner showing that it has been paid or a certificate stating that no amount is due.

(2) *Liability of purchaser; release.* If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the ex-

tent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, the commissioner shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the commissioner of the amount that must be paid as a condition of issuing the certificate. Failure of the commissioner to mail the notice shall release the purchaser from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time that the assessment against the retailer becomes final, whichever event occurs later.

SEC. 12-425. *Overpayments and refunds.* (1) *Credits and refunds.* If the commissioner determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the commissioner shall certify to the state treasurer the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the treasurer, the excess amount collected or paid shall be credited on any amounts then due and payable from the person under this chapter, and the balance shall be refunded, upon order of the comptroller, to the person or his successors, administrators or executors. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to this chapter shall be credited or refunded by the state to the purchaser.

(2) *Claim; limitation period.* No refund shall be allowed unless a claim therefor is filed with the commissioner within three years from the last day of the month succeeding the quarterly period for which the overpayment was made, or, with respect to assessments made under sections 12-415 and 12-416, within six months after the assessments become final, or within six months from the date of overpayment,

whichever period expires later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the commissioner within such period, or unless the credit relates to a period for which a waiver is given pursuant to subsection (8) of section 12-415.

(3) *Condition; sales tax reimbursment.* No credit or refund of any amount paid pursuant to section 12-411 shall be allowed on the ground that the storage, use or other consumption of the property is exempted under subsection (1) of section 12-413, unless in addition to the overpayment for which the claim is filed the claimant also reimburses his vendor for the amount of the sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the state.

(4) *Form and content of claim.* Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(5) *Effect of failure to file claim.* Failure to file a claim within the time prescribed in this section constitutes a waiver of any demand against the state on account of overpayment.

(6) *Notice of action on claim.* Within thirty days after disallowing any claim in whole or in part the commissioner shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency assessment.

SEC. 12-426. *Administration.* (1) *Enforcement by commissioner; regulations.* The commissioner shall enforce the provisions of this chapter and may adopt and enforce regulations relating to the administration and enforcement of this chapter. The commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) *Employees and representatives of commissioner.* The commissioner may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this chapter, in accordance with the provisions of chapter 63, and may designate representatives to conduct hearings or perform any other duties imposed by this chapter upon the commissioner.

(3) *Records.* Every seller, every retailer as defined in subdivision (b) of subsection (12) of section 12-407 and every person storing, using or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the commissioner requires.

(4) *Examination of records.* The commissioner or any person authorized by him may examine the books, papers, records and equipment of any person liable for the use tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(5) *Reports relative to use tax liability.* In administration of the use tax the commissioner may require the filing of information reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use or other consumption of which is subject to the tax. Such reports shall be filed when the commissioner requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale and such other information as the commissioner may require.

(6) *Divulging of information forbidden.* Neither the commissioner, his attorney or agent nor any other officer or

employee engaged in the administration of this chapter shall make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person, except for purposes of photostating or microfilming; provided the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists or by any other person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties. Any person who violates any provision of this subsection shall be fined not more than one thousand dollars.

SEC. 12-427. *Disposition of proceeds; refunds.* (1) *Settlement with treasurer.* All funds received by the tax commissioner under the provisions of this chapter shall be recorded with the comptroller and shall be deposited daily with the state treasurer. The commissioner shall issue his receipt to any taxpayer for any payment upon request.

(2) *Refunds to be made from general fund.* For the purpose of making any refund provided for in this chapter, the comptroller, upon certification of the tax commissioner and with the approval of the finance advisory committee, is authorized to draw upon the unappropriated surplus of the general fund.

(3) *Publication and disclosure of information.* The tax

commissioner shall publish in his report, required under the provisions of section 4-60, data showing the amount of taxes and the amount of penalties, assessed under the provisions of this chapter, with such classifications of taxpayers, incomes and deductions and such other facts as he deems pertinent and valuable. Such published figures shall not disclose the operations of any taxpayer in such manner as to permit the identification of such taxpayer by those unassociated with his business. The commissioner shall, at least annually, and oftener in his discretion, publish for distribution all regulations prescribed hereunder and such rulings and information as appear to him to be of general interest.

SEC. 12-428. *Violations.* (1) *Criminal penalties.* Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the commissioner, or who renders a false or fraudulent return, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both for each offense.

(2) *Fraudulent returns.* Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the assessment of an amount due, required by law to be made, shall for each offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned for not more than one year or be both fined and imprisoned.

(3) *Violation of law.* Any person who violates any provision of this chapter, for which no other penalty is provided, shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

SEC. 12-429. *Oaths and subpoenas.* The commissioner and any agent of the commissioner authorized to conduct any inquiry, investigation or hearing hereunder may administer

oaths and take testimony under oath relative to the matter of inquiry or investigaion. At any hearing ordered by the commissioner, the commissioner or his agent authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena authorized to be issued by the provisions of this chapter shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate him, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against him. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by the commissioner or his authorized agent, or to produce any books and papers pursuant thereto, the commissioner or such agent may apply to the superior court for the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge of said court if the same is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers and, upon refusal so to do, shall commit such person to jail until he testifies, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person the commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the commissioner or under his authority and witnesses attending hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the commissioner on order of the comptroller from the appropriation for the administration of this chapter.

SEC. 12-430. *Miscellaneous provisions.* (1) *Security for tax.* The commissioner, whenever he deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with him such security as the commmissioner determines. The amount of the security shall be fixed by the commissioner but shall not be greater than twice the person's estimated average liability for the period for which he files returns, determined in such manner as the commissioner deems proper, or ten thousand dollars, whichever amount is the lesser. The amount of the security may be increased or decreased by the commissioner subject to the limitations herein provided. The commissioner may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, or any interest or penalty due. Notice of the sale may be served upon the person who deposited the security personally or by mail. If by mail, service shall be made in the manner prescribed for service of a notice of a deficiency assessment and shall be addressed to the person at his address as it appears in the records of the commissioner's office. Security in the form of a bearer bond, issued by the United States or the state of Connecticut, which has a prevailing market price may, however, be sold by the commissioner at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

(2) *Penalty for delinquent filing of return.* In addition to the other penalty provided for in section 12-428, a penalty of two dollars and fifty cents shall be imposed upon each person required by this chapter to file a return when the same is filed subsequent to the last day of filing for each quarterly or other period. The commissioner, in his discretion and for due cause shown, may waive such penalty.

(3) *Evidence of tax on motor vehicles.* Each person before obtaining an original or transferral registration for a motor vehicle in this state shall furnish evidence that any tax due thereon pursuant to the provisions of this chapter has been paid in accordance with regulations prescribed by the tax commissioner, and on forms approved by the tax commissioner and the motor vehicle commissioner. The motor vehicle commissioner shall, upon the request of the tax commissioner, after hearing by the tax commissioner, suspend or revoke a motor vehicle registration of any person who fails to pay any tax due in connection with the sale, storage, use or other consumption of such motor vehicle pursuant to the provisions of this chapter.

(4) *Trade-in of motor vehicles or farm tractors.* Where a trade-in of a motor vehicle is received by a motor vehicle dealer, licensed under the provisions of subdivision (D) of part III of chapter 246 and holding a valid seller's permit, upon the sale of another motor vehicle to a consumer, or where a trade-in of a farm tractor is received by retailer of farm tractors holding a valid seller's permit, upon the sale of another farm tractor to a consumer, the tax is only on the difference between the sale price of the motor vehicle or farm tractor purchased and the amount allowed on the motor vehicle or farm tractor traded in on such purchase. When any such motor vehicle or farm tractor traded in is subsequently sold to a consumer or user, the tax provided for in this chapter applies.

(5) *Payment of sales or use tax to another state.* If any article of tangible personal property has already been subjected to a sales or use tax by any other state or political subdivision thereof and payment made thereon in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference, only, between the rate herein fixed and the rate by which the previous tax upon the sale or

use was computed. If such tax imposed in such other state or political subdivision thereof is equivalent to or in excess of the rate imposed under this chapter at the time of such sale or use, then no tax shall be due on such article.

SEC. 12-431. *Tax on casual sales of motor vehicles, boats and airplanes.* In case of the purchase of any motor vehicle, boat or airplane other than from a licensed motor vehicle dealer or a dealer or retailer of boats or airplanes, the receipts therefrom shall not be included in the measure of the sales tax, but the purchaser thereof shall pay a use tax on the total purchase price thereof to the tax commissioner, as provided in section 12-411, in the case of tangible personal property purchased from a retailer and, in the case of motor vehicles, before obtaining an original or transferral registration in accordance with regulations prescribed by the tax commissioner and on forms approved by the tax commissioner and the commissioner of motor vehicles; provided no use tax shall be payable in cases of transfer or purchase (a) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the seller or (b) when a motor vehicle is transferred or sold in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business, provided (1) the last taxable sale, transfer or use of the vehicle was subjected to a tax imposed by this chapter, (2) the tranferee is the incorporated or unincorporated business or a stockholder, owner, member or partner thereof and (3) any gain or loss to the transferor is not recognized for federal income tax purposes under the provisions of the Internal Revenue Code and treasury regulations and rulings issued thereunder.

SEC. 12-432. *Use of proceeds.* All proceeds of the tax collected under the provisions of this chapter shall be allocated to and expended for public health, welfare and education purposes only.

SEC. 12-432a. *Civil actions on sales solicited by catalogs.* No retailer, as defined in subsection (12) (d) of section 12-407, who fails to comply with the provisions of chapter 219 of the general statutes, as herein amended, shall maintain any action in law or equity in this state on any sale or transaction included under said subsection (12) (d).

78th Congress, 2d Session } SENATE Report No. 959

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENT

JUNE 12 (legislative day, MAY 9, 1944. — Ordered to be printed

MR. BRIDGES, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes

as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

WAR DEPARTMENT,
Washington, June 9, 1944.

HON. ROBERT R. REYNOLDS,
Chairman, Committee on Military Affairs,
United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enactment of H. R. 4733, Seventy-eighth Con-

gress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942 (56) Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733 to the Committee on Military Affairs, House of Representatives, that there was no objection to its submission to the Congress.

Sincerely yours,

Secretary of War.
HENRY L. STIMSON,

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

[H. Rept. No. 1514, 78th Cong., 2d sess.]

The Committee on Military Affairs, to whom was referred

the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be

effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942."

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

"SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment."

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

EXISTING LAW

SEC. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehi-

cles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross recepits, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided,* That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further,* That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

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PROPOSED

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is prinited in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political sub-

division of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. *Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.*

78th Congress
2d Session

Report
No. 1514

HOUSE OF REPRESENTATIVES

AMENDING SECTION 514 OF THE SOLDIERS' AND SAILORS' RELIEF ACT

MAY 25, 1944. — Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

MR. SPARKMAN, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 4733]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report the eon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

SEC. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia,

such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

SEC. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as income taxes.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, there follows the provisions of existing law and the changes proposed:

EXISTING LAW

SEC. 514. For the purposes of taxation in respect of any person, or of his property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any

State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that its shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942.

PROPOSED

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax

upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further*, That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence."

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

The amendment proposed by the committee as compared to existing law is as follows (matter in which no change is proposed is shown in roman; matter proposed to be omitted is shown in black brackets; new matter is printed in italics):

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which

he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendment of 1942."] *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

SEC. 2. *Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.*

87th Congress
2d Session

SENATE

Report
No. 2182

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENT

September 28, 1962

REPORT

[To accompany H. R. 9747]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 9747) to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where personal property taxes may not be imposed upon property of a serviceman located in a State, such taxes may not be imposed upon such property after he is transferred out of such State, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574(1)), so as to clarify a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, the tax immunity provision of existing law shall apply with respect to his personal property, or the use thereof, within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders.

The Soldiers' and Sailors' Civil Relief Act already makes clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State.

In at least one situation, however, after a veteran was transferred overseas to a hardship post where he could not take his family, the nondomiciliary State imposed a tax on the serviceman's personal property. The basic intent of the original Civil Relief Act was to exempt servicemen from this form of taxation, except by a State of residence or domicile. To permit taxation of personal property by a nondomiciliary State, because of a transfer to active duty outside such State, would obviously be violative of the original intent of the Soldiers' and Sailors' Civil Relief Act. This legislation provides an equitable clarification of the situation: It assures that transfers of servicemen essential to their military duty shall not prejudice basic rights established by the Congress in recognition of the peculiar and special circumstances of military service.

There would be no cost resulting from enactment of the proposal. All of the provisions of the Soldiers' and Sailors' Civil Relief Act, other than those concerning insurance, are enforced by local courts and are not subject to centralized administration by a Federal agency.

The favorable reports of the Veterans' Administration, Bureau of the Budget, and Department of Defense now follow:

SEPTEMBER 10, 1962.

HON. LISTER HILL,

Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for a report by the Veterans' Administration on H.R. 9747, 87th Congress.

The bill, if enacted, would amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, the provisions of section 514 (exempting person property from certain State taxes) shall apply with respect to personal property, or the use thereof, within any tax jurisdiction other than the serviceman's place of residence or domicile, regardless of where the owner may be serving in compliance with such orders.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App. U.S.C. 574), provides that for the purposes of taxation of personal property a person in the military service shall not be deemed to have lost a residence or domicile in any State, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in any other State, while, and solely by reason of being, so absent. Section 514 further provides that for the purposes of taxation in respect to personal property of any such person by a State, of which such person is not a resident or in which he is not domiciled, personal property shall not be deemed to be located or to be present in or to have a situs for taxation in such State. However, nothing contained in section 514 prevents taxation by any State of personal property used in or arising from a trade or business, if the State otherwise has jurisdiction.

It is our understanding that the bill is designed to prevent the taxation by a State of the personal property of a serviceman which remains with his family in a State (which could not have taxed such property under section 514 so long as he was stationed in such State) after transfer of the serviceman overseas or to a post in a different State to which he did not or could not take his family.

The Soldiers' and Sailors' Civil Relief Act was designed to afford broad protection to persons while in military service. Ex-

cept for article IV, relating to the guarantee of certain commercial life insurance premiums, the provisions of the act are not administered by the Veterans' Administration, although our loan assistance activities are sometimes affected if the veteran has reentered the service. Most of the provisions of the act, including section 514, are construed and enforced by the courts in individual cases.

It is noted that the text of the bill has been amended as recommended by the Secretary of the Army in his report of July 24, 1962, to the chairman of the Committee on Veterans' Affairs, House of Representatives, and, as so amended, the bill would not be objectionable to the Department of Defense. As we indicated in our report to the House committee, a copy of which is enclosed for your ready reference, the Veterans' Administration defers to the views of the Departments of Defense and Justice as to the merits of the proposed legislation.

Advice was received from the Bureau of the Budget with respect to a similar report on this proposal to the House Committee on Veterans' Affairs that there was no objection to the presentation of such report from the standpoint of the administration's program.

Sincerely,

W. J. DRIVER,
Deputy Administrator
(For and in the absence of J. S. Gleason, Jr.,
Administrator).

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 31, 1952

HON. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is with reference to your request

of August 28, 1962, requesting the views of this office with respect to H.R. 9747, a bill to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

For the reasons set out in the report which the Department of the Army, on behalf of the Department of Defense, is submitting on this bill, the Bureau of the Budget would favor the enactment of H. R. 9747.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF THE ARMY,
Washington, D.C., September 4, 1962.

HON. LISTER HILL,
Chairman, Senate Labor and Public Welfare Committee,
U. S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your recent request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 9747, 87th Congress, a bill to amend section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The title of the bill states its purpose. The Department of the Army on behalf of the Department of Defense favors the bill as passed by the House of Representatives.

The existing provisions of section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574) as they relate to the taxation of personal property, presently provide that "for the purposes of taxation in respect of any person, or his personal property, * * * by any State, territory, possession,

or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State * * *, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * *, while, and solely by reason of being, so absent [; and] for the purposes of taxation in respect of the personal property * * * of any such person by any State * * * of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district." Section 514(1) contains a proviso to allow the taxation of personal property used in or arising from a trade or business. Under the amendment proposed in H.R. 9747 personal property which has acquired a tax exempt status under the present provisions of section 514(1) would retain this status while it was owned by a person in the military service who is not a resident of or domiciled in the political unit where the property is located. H.R. 9747 would not extend the present protection afforded service personnel under section 514(1) but would only clarify the present status of the law that the tax exempt status of the personal property of a serviceman is based upon the serviceman's absence from his State of residence or domicile in compliance with military or naval orders and not his presence in a State in compliance with military or naval orders. In at least one State, Virginia, the political subdivisions thereof are presently attempting to impose a personal property tax on the property of nondomiciliary service personnel which is left in the political subdivision after the serviceman is transferred elsewhere. At the present time a case, *United States and Captain Harold S. Bottomley, Jr., USN* v. *Arlington County* is being litigated. This case involves an attempt by Arlington County, Va., to impose a personal property tax on the property of a Navy captain which was left in Arlington County when the captain was transferred to the command of a vessel which was deployed in

the Far East. H.R. 9747 would clearly make the personal property in situations similar to the present court case nontaxable.

For the foregoing reasons, the Department of the Army on behalf of the Department of Defense recommends that the bill be favorably considered.

Enactment of this legislation will cause no apparent increase in budgetary requirements of the Department of Defense.

This report has been coordinated in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE,
Secretary of the Army.